

PATENT APPLICATION
042390.P10397

Request for extension of time under 37 C.F.R. § 1.136

Assignee herewith petitions the Director of the United States Patent and Trademark Office to extend the time for response to the Final Office Action dated April 22, 2003 for 2 month(s) from July 22, 2003 to September 22, 2003.

Please charge Deposit Account #02-2666 in the amount of:

(\$110.00 for a one month extension)
 (\$410.00 for a two month extension)
 (\$920.00 for a three month extension)
 (\$1,440.00 for a four month extension)

to cover the cost of the extension.

Remarks

Reexamination and reconsideration of this application is requested. Claims 1-4 and 6-20 remain in the application. No new claims have been added. The Abstract of the application has been amended as requested by the Final Office Action. However, Applicant would like to make clear that the amendment to the abstract does not narrow the scope of the present invention and this amendment is being done to advance the prosecution of the application.

Response to the 35 U.S.C. § 103(a) Rejection

The Final Office Action also rejects claims 1-4 and 6-20 under 35 U.S.C. § 103(a) as being unpatentable over Razavi in view of Fanning et al. (US

PATENT APPLICATION

042390.P10397

6,366,907), or alternatively, in further view of Tosaya, Britt, Jr. et al., and/or Segal et al. Applicant respectfully traverses this rejection in view of the remarks that follow.

It is well established that obviousness requires a teaching or a suggestion by the relied upon prior art of all the elements of a claim (M.P.E.P. §2142). Without conceding the appropriateness of the combination, Applicant respectfully submits that the combination of Razavi et al. and Fanning does not meet the requirements of an obvious rejection in that neither teaches nor suggests transferring music files between automobiles.

The Court of Appeals for the Federal Circuit has made clear the requirements of relied upon documents in order to establish a proper *prima facie* showing of obviousness:

"Determination of obviousness cannot be based on the hindsight combination of components selectively culled from the prior art to fit the parameters of the patented invention." *ATD Corp. v. Lydall, Inc.*, 159 F.3d 534, 546, 48 USPQ2d 1321, 1329 (Fed. Cir. 1998). There must be a teaching or suggestion within the prior art, within the nature of the problem to be solved, or within the general knowledge of a person of ordinary skill in the field of the invention, to look to particular sources, to select particular elements, and to combine them as combined by the inventor. See *Ruiz v. A.B. Chance Co.*, 234 F.3d 654, 665, 57 USPQ2d 1161, 1167 (Fed. Cir. 2000); *ATD Corp.*, 159 F.3d at 546, 48 USPQ2d at 1329;

PATENT APPLICATION

042390.P10397

Heidelberger Druckmaschinen AG v. Hantscho Commercial Prods., Inc., 21 F.3d 1068, 1072, 30 USPQ2d 1377, 1379 (Fed. Cir. 1994) (Emphasis added).

The Final Office Action stated; "... no single reference teaches peer-to-peer exchange of music files between automobiles..." and Applicant agrees with this statement. The CAFC has made clear that a teaching or suggesting of each and every feature of the claimed invention must be found in the prior art. In this case, the Final Office Action has admitted that no such teaching exists.

In addition, the only place that any teaching or suggestion of having a peer-to-peer exchange of music files may be found is in Applicant's specification. Applicant would like to kindly point out that Applicant's specification may not be used in hindsight to determine what is obvious in view of the prior art as held by the CAFC.

By admission of the Final Office Action, the prior art is devoid of any teaching or suggestion of at least some of the limitations recited in claims 1 and 11, the combination must necessarily be devoid of the required teaching or suggestion of all the elements recited in claims 1 and 11. Consequently, the combination cannot make Applicant's claims 6, 7, or 15 obvious.

PATENT APPLICATION

042390.P10397

Conclusion

The foregoing is submitted as a full and complete response to the Final Office Action mailed April 22, 2003, and it is submitted that claims 1-4 and 6-20 are in condition for allowance. Reconsideration of the rejection is requested. Should it be determined that an additional fee is due under 37 CFR §§1.6 or 1.17, or any excess fee has been received, please charge that fee or credit the amount of overcharge to deposit account #02-2666.

If the Examiner believes that there are any informalities which can be corrected by an Examiner's amendment, a telephone call to the undersigned at (480) 554-9732 is respectfully solicited.

Respectfully submitted,

David P. Henzerling



Kenneth M. Seddon
Assistant Director
Reg. No. 43,105

Dated: 9-22-03

RECEIVED
CENTRAL FAX CENTER

SEP 23 2003

c/o Blakely, Sokoloff, Taylor & Zafman, LLP
12400 Wilshire Blvd., Seventh Floor
Los Angeles, CA 90025-1026
(503) 264-0967

